HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE G.V. SEETHAPATHY

WRIT PETITION NO. 18322 OF 2006

BETWEEN

M./s Agarwal Industries (P) Limited,
Hyderabad.

.....

Petitioner

And

The State Government of A.P.,
represented by its Secretary,
EFS & T Dept., A.P. Secretariat,
Hyderabad & others

.....Respondents

::O R D E R ::

Counsel for the Petitioner : Shri S. Ravi

Dated: 04.09.2006

Per G.S. SINGHVI, CJ

This is the second round of litigation by the petitioner in the matter of action taken by the Andhra Pradesh Pollution Control Board (for short, 'the Board') under Water (Prevention and Control

of Pollution) Act, 1974 (for short, 'the Water Act') and Air (Prevention and Control of Pollution) Act, 1981 (for short, 'the Air Act').

The petitioner is engaged in the manufacture of vanaspathi, refined oils etc. It established a factory at Azamabad, Hyderabad in 1940. After coming into force of the Water and Air Acts, the petitioner obtained consent under the relevant statutory provisions, which was renewed from time to time. The term of the last renewal ended on 31-3-2005. The petitioner claims to have applied for further renewal of consent, but its application does not appear to have been accepted apparently because of the action initiated by the Board for closure of the unit by invoking the provisions of the Water and Air Acts.

It is borne out from the record that on receipt of the complaint made by the residents of the locality in which the petitioner's unit is situated, the Board directed the petitioner to take measures for prevention of pollution, but the latter failed to take remedial measures. Therefore, by an order dated 17-10-2005 passed under Section 31-A of the Air Act, the Board directed the petitioner to stop production. That order was revoked on 22-10-2005 because the petitioner gave an undertaking to take measures for controlling the pollution. While doing so, the Board imposed the following conditions:

i) The industry may operate both Refinery and Vanaspathi sections during daytime and shall stop Vanaspathi section during night time and may operate the Refinery section in night time.

ii) The industry shall take all necessary measures to control noise pollution and noise levels shall not

exceed the following:
Day time (6 AM to 10 PM) – 75 dB (A) and Night time (10 PM to 6 AM) – 70 dB (A)

iii) Industry shall upgrade the Air Pollution Control Equipment attached to the Boiler by replacing the existing Bag filters with high density filters by end of November, 2005 so as to meet the SPM standard of 50 mg/Nm3.

iv) Industry shall close the operations and shift out of Azamabad to Kakinada by 31st December 2005 for which CFE of the Board has already been issued."

Notwithstanding the aforementioned concession granted by the Board, the petitioner failed to take appropriate and adequate anti-pollution measures necessitating passing of order dated 20-12-2005 vide which the Board directed it to operate industry till 31-12-2005 for the purpose of clearing the existing material from pipelines/storage tanks only and shift out of Azamabad to Kakinada by 31-12-2005. Paragraphs 4 to 9 of that order read as under:

4. Vide reference 3rd and 4th cited, you have requested the Board on 29-11-2005 & 03-12-2005 to grant 15 days time to enable to restart the Boiler and manufacturing process so as to clear the goods lying in the process and stated that you have stopped the operation of the Boiler and production on 30-11-2005.

5. Vide reference 5th cited, the Board officials inspected your industry on 02-12-2005 and observed that the industry was not in operation and not upgraded the air pollution control equipment attached to the Boiler by replacing the existing bag filters with high density filters by end of November, 2005 so as to meet the SPM standards 50 mg/Nm3.

6. Vide reference 6th cited, the Board rejected your request as you have failed to install equipments for control of SPM by 30-11-2005 and also directed to close your industry and move your industrial operations to Kakinada for which CFE of the Board has been already issued.

7. Vide reference 7th cited, you have again requested the Board on 12-12-2005 to accord permission for 15 days to enable to clear the stocks lying in storage tanks and fill the same in containers.

8. After careful consideration of all material facts of the case, the Board hereby permits your industry to operate during day time (6 A.M. to 10 P.M.) till 31-12-2005, under section 31 (A) of the Air (Prevention and Control of Pollution) Amendment Act, 1987, with the following conditions:

   i) The industry shall operate to clear the existing material from pipelines/storage tanks only.

   ii) The industry carry out the above operations only during daytime i.e. from 6 AM to 10 PM.

   iii) The industry shall take all necessary measures to control noise pollution and noise levels shall not exceed for day time (6 AM to 10 PM) – 75 dB(A).

   iv) Industry shall operate the Air Pollution Control Equipment attached to the Boiler.

   v) Industry shall close all the operations and shift out of Azamabad to Kakinada by 31st Decemberr 2005 for which CFE of the Board has already been issued.

9. You are hereby directed to note that, should you misuse these orders to operate your industry without complying with the above conditions, action will be initiated against your industry under Section 31 (A) of the Air (Prevention and Control of Pollution)

> Amendment Act, 1987, you will be liable for prosecution under Section 37 (1) of the Air (Prevention and Control of Pollution) Amendment Act, 1987, the punishment for which includes imprisonment for a term which shall not be less than one year six months and which may be extended to six years with a fine."

The petitioner challenged the aforementioned order by filing an appeal, which was dismissed by the Appellate Authority constituted under the Water and Air Acts (hereinafter described as 'the Appellate Authority') vide its order dated 4-2-2006. However, liberty was given to the petitioner to approach the Board for grant of permission to operate refinery section. This was done by the Appellate Authority because the representative of the petitioner claimed that the refinery section is situated far away from the residential complexes. The petitioner challenged the appellate order in Writ Petition No.12176 of 2006, which was dismissed on 20-6-2006. The Court noted that the Board had given adequate opportunity to the petitioner to take steps for controlling the pollution, but the latter had failed to take remedial measures. The Court further noted that the Appellate Authority had independently examined the entire matter and dismissed the appeal and then observed:

> "In our opinion, the reasons assigned by the Board for refusing to allow the petitioner to continue its operations are directly germane to the provisions of Section 31-A of the Air Act and order dated 20-12-2005 does not call for interference more so because despite the revocation of earlier order of closure, the petitioner failed to take steps to upgrade air pollution equipments attached to the boiler.

This, by itself, constituted a valid ground for reiterating the order of closure. The Appellate Authority, as mentioned above, independently considered the entire matter and refused to interfere with the action taken by the Board because the petitioner failed to take steps for controlling air pollution.

Learned counsel for the petitioner made strenuous efforts to persuade us to nullify the order impugned in the writ petition by arguing that the Appellate Authority did not consider his client's plea of discrimination, but we have not felt impressed. In our considered view, failure of the Board to take action against similarly situated polluting industries cannot justify invoking of the doctrine of equality enshrined in Article 14 of the Constitution. It is settled law that an illegal order passed or action taken by a public authority cannot be made basis for nullifying an otherwise lawful order passed or action taken by such authority."

In the meanwhile, the petitioner submitted application dated 16-2-2006 to the Board for permission to operate refinery section. The same was rejected by the Board vide its order dated 29-3-2006 on the ground that the boiler of the refinery is located adjacent to the residential complexes, which is the major source of air pollution. For the sake of reference, paragraph 4 of the last mentioned order passed by the Board is reproduced below:

"4. After detailed discussion, the Board's Task Force Committee during the legal hearing held on 24-03-2006 decided not to reconsider the industry's request to allow them to operate the refinery section as the boiler of the refinery is located adjacent to the residential complexes, which is major source of air pollution and as you have already committed to the Board for re-location of your industry."

The appeal preferred by the petitioner was dismissed by

the Appellate Authority with an observation that the reasons assigned by the Board for not allowing the petitioner to operate refinery section do not suffer from any infirmity.

Sri S. Ravi, learned counsel for the petitioner argued that the so-called undertaking given by the petitioner to shift the industry is non-existent and the Board as well as the Appellate Authority committed a serious error by stopping the operation of the petitioner's unit by wrongly presuming that the petitioner has agreed to shift the industry to Kakinada. Learned counsel then argued that the reasons assigned by the Board for refusing permission to the petitioner to operate refinery section are not only incorrect, but are totally irrelevant and extraneous. He submitted that the boiler of the refinery section is far away from the residential complexes and, therefore, there could be no objection to the running of refinery section. Learned counsel submitted that if the petitioner is not allowed to operate refinery section of the unit, then it would suffer incalculable harm.

We have given serious thought to the entire matter. In our opinion, the writ petition is meritless and is liable to be dismissed at the threshold because,

1) The petitioner's challenge to order dated 20-12-2005 passed by the Board for closure of its unit with effect from

   31-12-2005 has already been negatived by this Court by dismissing Writ Petition No.12176 of 2006 and that order has become final (it has neither been averred in the affidavit filed in support of the writ petition nor learned

counsel for the petitioner disclosed that the order passed by this Court in the previous round of litigation has been challenged before the Supreme Court). Therefore, it is not open to the petitioner to resurrect its challenge to the closure of the unit.

2) The liberty given by the Appellate Authority to the petitioner to approach the Board for permission to operate refinery section did not imply a mandate to the latter to accept the prayer of the petitioner.

3) The Board has assigned cogent reason for not entertaining the petitioner's request for being allowed to operate refinery section. The location of the boiler in the vicinity of residential complexes and harmful effect on the people living in the area on account of the air pollution caused by the boiler certainly merited rejection of the petitioner's prayer moreso because the latter had failed to take measures to control the pollution.

4) The petitioner has not produced any tangible evidence to show that it had not approached the Board for grant of consent for shifting its industry to Kakinada and that its request has already been accepted. It is, therefore, reasonable to infer that the petitioner had given an assurance to the Board that the unit will be shifted from Azamabad to Kakinada by 31-12-2005.

No other point has been argued.

For the reasons mentioned above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, the prayer made in WPMP No.23019 of 2006 for interim relief is also dismissed.

G.S. SINGHVI, CJ

G.V. SEETHAPATHY, J

04.09.2006
svs